BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the matter of	)	**WT Docket No. 94-147**
	)	
JAMES A. KAY, JR.	)	
	)	
Licensee of one hundred fifty-two Part 90 licenses in the Los Angeles, California area.	)	

To: The Honorable Richard L. Sippel

MOTION TO DISQUALIFY PRESIDING OFFICER

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Dated: March 26, 1997

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SUMMARY STATEMENT

James A. Kay, Jr. files this Motion to Disqualify Presiding Officer and, pursuant to Section 1.245(b) of the Commission's Rules, requests that the Presiding Officer disqualify himself from this proceeding on the grounds of personal bias and prejudice.

The primary basis for this Motion to Disqualify is the Presiding Officer's conduct prior to his issuance of the Summary Decision, FCC 96D-02 (released May 31, 1996). Pursuant to the General Counsel's recently released Memorandum Opinion and Order FCC 97I-06, released February 20, 1997, the Summary Decision was overturned and the case was remanded to the Presiding Officer for a full hearing on the merits. Prior to the issuance of the Summary Decision, the Presiding Officer violated all established rules regarding due process and fundamental fairness by failing to consider any testimony presented by Kay and by failing to give Kay an opportunity to cross-examine the Commission's witnesses. In addition, further evidence of the Presiding Officer's personal biases and prejudices include his: (i) exceptional, unnecessary, and improper criticisms of Kay, Kay's business practices, and Kay's former counsel, along with other conclusions totally unsupported by the record, contained in the Summary Decision and other orders issued by the Presiding Officer; (ii) alleged receipt of correspondence from an interested party, in violation of the Commission's ex parte rules; and (iii) bias against Kay resulting from Kay's filing of a lawsuit in which Kay claimed that the defendants, all FCC employees, violated his constitutional rights in handling administrative matters involving Kay.

For the reasons set forth in the Motion to Disqualify Presiding Officer and the Declaration of James A. Kay, Jr., Kay believes that the Presiding Officer should recognize that the overriding need for the administrative process to be fair necessitates his withdrawal.

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MOTION TO DISQUALIFY PRESIDING OFFICER

James A. Kay, Jr. ("Kay"), by his attorneys, respectfully requests, pursuant to Section 1.245(b) of the Commission's Rules, that the Presiding Officer disqualify himself from this proceeding on the grounds of personal bias and prejudice. In support thereof, Kay states as follows:

1. At set forth in this Motion and Kay's Declaration (attached hereto), Kay submits that the Presiding Officer, Richard L. Sippel ("Presiding Officer"), has developed, by his involvement in this case, such a personal bias and prejudice against Kay that he is unable to render an unbiased decision in this proceeding. As a result of this personal bias and prejudice, and to ensure that Kay receives a full and fair hearing, Kay respectfully requests that the Presiding Officer withdraw from this proceeding.

2. The primary basis for this Motion to Disqualify is the Presiding Officer's conduct prior to his issuance of the Summary Decision, FCC 96D-02 (Released May 31, 1996)[1]

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[1] Pursuant to the General Counsel's Memorandum Opinion and Order FCC 97I-06, released February 20, 1997 ("MO&O"), the S.D. was overturned and the case was remanded to the Presiding Officer for a full hearing on the merits.

(hereinafter, "S.D."). According to the MO&O, in rendering the S.D., the Presiding Officer relied on factual representations made by the Bureau staff made during the January 31, 1996 Prehearing Conference and failed to give Kay an "opportunity for cross-examination or presentation of rebuttal evidence . . ." (MO&O at Pg. 8) Therefore, "it is clear that there was no basis for [the Presiding Officer's] grant of the Bureau's motion for summary decision." (MO&O at Pg. 8). These actions clearly evidence the Presiding Officer's unwillingness to hear and consider evidence from Kay concerning charges against him that the Bureau has, to date, failed to even identify with specificity.

3. As will be shown herein, the following further evidence the personal biases and prejudices on the Presiding Officer's part: (i) exceptional, unnecessary, and improper criticisms of Kay, Kay's business practices, and Kay's former counsel, along with other conclusions totally unsupported by the record, contained in the S.D. and other orders issued by the Presiding Officer; (ii) alleged receipt of correspondence from an interested party, in violation of the Commission's ex parte rules; and (iii) bias against Kay resulting from Kay's filing of a lawsuit (James A. Kay, Jr. v. W. Riley Hollingsworth, et. al., No. 1: CV-94-1707 (M.D. PA)) ("Bivens Action") in which Kay claimed that the defendants, all FCC employees, violated his constitutional rights in handling administrative matters involving Kay.

4. Throughout the course of these proceedings, and particularly in the S.D., the Presiding Officer, showed his deep rooted animosity for Kay. Perhaps most egregious, in the S.D., the Presiding Officer imposed a $75,000.00 forfeiture (S.D. at Pg. 19) despite the fact that the Presiding Officer did not make the requisite finding that Kay committed any willful or repeated violations of the Commission's Rules. The Wireless Telecommunications Bureau

("Bureau"), when offered the opportunity to address forfeiture prior to the issuance of the S.D., stated that it had not considered the issue (See Transcript of January 31, 1996 Prehearing Conference at Pg. 151). In the S.D., the Presiding Officer even recognized that the Bureau had not requested a forfeiture (S.D. at Pg. 19). Nonetheless, the Presiding Officer sua sponte ordered the forfeiture.

5. The S.D. contains other examples of the Presiding Officer's unequivocal personal bias against Kay. Specifically:

A. The Presiding Officer ruled that "the reliability of [the representations made by the Bureau staff during the January 31, 1996 Prehearing Conference] for decisional purposes is the equivalent of an affidavit since the ultimate fact is conceded that the Bureau has not been given the loading data that it has requested." (S.D. at Pg. 10). The Presiding Officer's unfounded conclusion that the Bureau staff's testimony is inherently reliable is evidence of bias, particularly since the Presiding Officer never permitted Kay's attorneys to cross-examine or otherwise challenge the Bureau staff's testimony and never considered any testimony from Kay prior to issuing the S.D..[2] In reaching this conclusion, the Presiding Officer also failed to consider whether the Commission's Rules required Kay to keep records or in what form, if any, such records were to be kept. The MO&O confirms that the Presiding Officer acted, in his handling of the evidence, "contrary to Commission pleading requirements." (MO&O at ¶ 17).

B. The Presiding Officer stated that "Kay chose to reply on June 30, 1994, with unconcealed arrogance, that there would be no date subsequent to January 1994 that would be convenient for compliance with the Bureau's request." (S.D. at Pg. 12, emphasis added). The Presiding Officer reached this conclusion without considering the Commission's Rules and the circumstances surrounding the Bureau's request and Kay's response (specifically, the devastating earthquake in California near Kay's business,

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[2] See, e.g., Faulkner Radio, Inc. v. F.C.C., 557 F.2d 866 (D.C. Cir. 1977) (Court held that the Commission erred in attaching greater weight to the testimony of two parties who were lawyers, simply because they were lawyers, than to the testimony of opposing witnesses.)

Kay's recordkeeping system and Kay's legitimate concerns regarding confidentiality).

C. With regard to Kay's loading records, the Presiding Officer ruled that "Kay knew that such information could be requested." (S.D. at Pg. 15). Similarly, the Presiding Officer implied that Kay "deliberately" designed a business record system which does not permit the ready retrieval of loading data. (S.D. at Pg. 16). During the January 31, 1996 Prehearing Conference, the Presiding Judge also expressed his belief that Kay was not turning over all of his loading records by stating that "we could get into a situation where we start negotiating further with Mr. Kay to get information . . ." (See Transcript of January 31, 1996 Prehearing Conference at Pg. 181). These conclusions, perhaps more than any other, were not based on any evidence contained in the record and clearly show the Presiding Officer's personal bias and prejudice.

D. In footnote 13 on page 13 of the S.D., the Presiding Officer found that "[t]he complaints to the Bureau provided sufficient cause for issuing the Section 308 letter." Kay has not seen the letters submitted to the Bureau from the complaining parties since the Bureau has, to date, failed to produce the same to Kay. The "complaint letters" are not part of the record in this proceeding. Therefore, the question arises as to whether the Presiding Officer is so biased against Kay that he will assume the veracity of "extra record" documents.

E. The Presiding Officer also found the conduct of Kay's former counsel objectionable and unnecessarily referenced twelve (12) pleadings filed by Kay's former counsel that the Presiding Officer found to be "frivolous" and suggested that Bureau take these matters to the FCC's General Counsel for further (presumably, disciplinary) action. (S.D. at Pg. 17, n. 18).[3] The Presiding Officer did not need the S.D. to make this suggestion. Clearly, the conduct of Kay's former counsel has had a negative impact on the Presiding Officer and impacted on his ability to treat the licensee fairly.

F. The Presiding Officer was also prejudiced by information obtained through his review of pleadings and decisions in a Bivens Action, which have no bearing on the case before the Presiding Officer. Nonetheless,

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[3] See, e.g., State v. Davis, 159 Ga. App. 537, 284 S.E.2d 51, 53 (1981) ("judicial prejudice against counsel would vicariously result in judicial prejudice against the represented party.").

during a Prehearing Conference conducted on October 24, 1995, the Presiding Officer acknowledged that he had read the Court's decision in the Bivens Action (despite the fact that the decision was not part of the record before the Presiding Officer) and, based on that decision, was "sensitive" to requests from Kay's counsel to depose the Bureau staff. This is further indicia that the Presiding Officer's decisions were shaped by events that were totally unrelated to the facts and issues before the Presiding Officer.

6. In connection with pending California litigation, Kay sought to depose Robert Andary, the former Inspector General at the FCC. Although the Department of Justice successfully quashed the Andary deposition subpoena (an appeal of this issue is pending before the District of Columbia Court of Appeals), Mr. Andary, through his attorneys at the Department of Justice, produced a July, 1995 letter from Annedore Pick addressed to the Presiding Officer (the "Pick Letter"). A copy of a July 14, 1995 letter from Gerard Pick to Regina M. Keeney and a copy of July 7, 1995 letter from Gerard Pick to the Sheriff of Los Angeles County (Internal Affairs Bureau) were also attached to the Pick Letter. A copy of the Pick Letter, with enclosures, is attached hereto as Exhibit "A".

7. The Pick Letter appears to have been sent, and received, in violation of the FCC's ex parte rules (47 C.F.R. § 1.1200, et. seq.) since, prior to the Justice Department's production of the Pick Letter on August 30, 1996, neither Kay nor his counsel had received the Pick Letter.

8. Despite Kay's efforts to determine if the Presiding Officer actually received and/or reviewed the Pick Letter, the Bureau, the Presiding Officer, the FCC and the Department of Justice have strenuously sought to prevent Kay from making this determination. In attempting to determine if the Presiding Officer actually received and/or reviewed the Pick Letter, Kay has taken the following actions:

A. Kay sought to depose the Presiding Officer's secretary (in conjunction with a Freedom of Information Act appeal before the United States District Court for the District of Columbia) concerning one narrow issue, the FCC's procedures regarding the receipt and handling of third-party correspondence. The Department of Justice has moved to quash the deposition subpoena. A ruling on the motion to quash is pending.

B. Through the Freedom of Information Act, Kay sought to obtain a copy of any log or index maintained by, inter alia, the Presiding Officer. In a letter dated January 6, 1997, the Presiding Officer personally responded, stating that the log did not contain any correspondence from, among others, Annedore Pick. However, neither the Presiding Officer nor the FCC produced a copy of the log. Kay filed an appeal of the denial of this FOIA request on February 26, 1997.

C. As noted above, the Department of Justice has vigorously sought to prevent Kay from deposing Robert Andary concerning the Pick Letter and Andary's receipt or review of the same. In addition, counsel for the FCC also sought to prevent Kay from taking Andary's deposition in conjunction with the FOIA Appeal pending before the United States District Court for the District of Columbia.

D. Despite a request to do so, the Department of Justice has also refused to provide Kay's counsel with a copy of the Pick Letter without the post-it note covering a portion of page 1, further hampering Kay's examination of the Pick Letter and the Presiding Officer's receipt of the same.

9. Although Kay admittedly cannot prove, at this time, that the Presiding Officer received and/or reviewed the Pick Letter, the Presiding Officer's actual receipt of the Pick Letter is not the determining fact in considering this Motion to Disqualify. The Pick Letter was addressed to the Presiding Officer and must be presumed to have been delivered. Therefore, the

existence of an ex parte communication alone creates the appearance of impropriety[4], to the extent that the Presiding Officer must recuse himself.[5]

10. Additional evidence of the Presiding Officer's personal bias is found in his decisions concerning discovery. For example, in an Order, 95M-28, released February 1, 1995, the Presiding Officer permitted Kay to propound only ten interrogatories to the Bureau with respect to each of the ten substantive paragraphs of the Hearing Designation Order. The Commission's Rules impose no such limitation.

11. In the face of the Presiding Officer's self-imposed limitation on Kay's right to take discovery, Kay served interrogatories on the Bureau. After receiving and reviewing the Bureau's inadequate and incomplete responses, Kay filed a Motion to Compel. In the Presiding Officer's decision on Kay's Motion to Compel (Order, 95M-102, released April 7, 1995), the Presiding Officer ruled that "[t]o require that the Bureau comply with the additional information sought by Kay's Motion to Compel would require the disclosure of matter which would be redundant,

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[4] See, e.g., United States v. Hollister, 746 F.2d 420, 425-6 (8th Cir. 1984) ("Avoiding the appearance of impropriety is as important to developing public confidence in the judiciary as avoiding impropriety itself."); Amos Treat & Co. v. Securities and Exchange Comm., 306 F.2d 260, 267 (D.C. Cir. 1962) ("[A]n administrative hearing of such importance and vast potential consequences must be attended, not only with every element of fairness but with the very appearance of complete fairness. Only thus can the tribunal conducting a quasi-adjudicatory proceeding meet the basic requirement of due process."); In re Murchison, 349 U.S. 133, 136, 75 S.Ct. 623, 625 (1955) ("[T]o perform its high function in the best way 'justice must satisfy the appearance of justice.'" (quoting Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11 (1954)).

[5] See, e.g., Metropolitan Council of NAACP Branches v. FCC, 46 F.3d 1154, 1164-65 (D.C. Cir. 1995) ("In an adjudicatory proceeding, recusal is required only where 'a disinterested observer may conclude that [the decision maker] has in some measure adjudged the facts as well as the law of a particular case in advance of hearing it.'" (quoting Cinderella Career and Finishing Schools, Inc. v. FTC, 425 F.2d 583, 591 (D.C. Cir. 1970)).

burdensome and/or protected as work product." (Pg. 3). However, in its opposition to Kay's Motion to Compel, the Bureau never specifically raised the work product privilege as a basis for withholding documents otherwise responsive to Kay's interrogatories.

12. Kay has not been treated with the same indulgence. Kay has produced, at his own expense, approximately 35,000 documents to the Bureau in discovery and Kay's ability to prepare a defense to the charges in the Hearing Designation Order has been seriously hampered by the Presiding Officer's overly strict and burdensome orders governing discovery. See, e.g., Order, 95M-131, released May 26, 1995 (at Pg. 6) ("Kay must represent that a thorough search was made of his records for billings. Kay must also describe the steps taken to conduct the search and represent whether any bill to Walnut was found.")

13. Throughout these proceedings, Kay has contended that the Bureau has wrongfully failed to produce specific evidence supporting the allegations contained in the Hearing Designation Order. To date, the Bureau still has not provided Kay with this information. This is further indicia of the Presiding Officer's bias and prejudice against Kay and the Presiding Officer's unwillingness to allow Kay to prepare a case to preserve his business enterprise.

14. Further evidence of the Presiding Officer's continued bias is found in the latest Prehearing Conference Order, FCC 97M-32, released March 3, 1997. In the Prehearing Conference Order, the Presiding Officer surprisingly presumes that the Bureau will take Kay's deposition (page 2) and that Kay will be required to testify in open court (page 4). This is extremely presumptuous since the parties and their counsel, not the Presiding Officer, are expected to present the arguments and call the witnesses they deem necessary. Although the Bureau may wish to depose Kay and/or seek his testimony at the hearing, the Bureau logically

may not deem Kay's testimony necessary to carry its burden of proof in this case. The job of the Presiding Officer is to be an impartial trier of fact and law, not an unofficial "coach" directing the litigation strategy of the Bureau's prosecution team.[6]

15. Recognizing that "judicial rulings alone almost never constitute valid basis for a bias or partiality motion," (Liteky v. U.S., 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994)), the Pick Letter alone is sufficient evidence of the Presiding Officer's bias or prejudice. However, the Pick Letter must be viewed in conjunction with the Presiding Officer's statements and rulings because "it is not always possible to establish an extra-judicial source for bias, . . . the comments and rulings of the trier of fact may be relevant to the existence of prejudice." KAYE Broadcasters, Inc., 24 RR 2d 772 (1972). When the Presiding Officer's comments and rulings, as described herein, are examined in conjunction with the Pick Letter, it is clear that the Presiding Officer must withdraw on the grounds of personal bias and prejudice.

16. In National Labor Relations Board v. Phelps, 136 F.2d 562, 563-64 (5th Cir. 1943), the Fifth Circuit had the same concerns that Kay has in this proceeding; namely, that he be given a full and fair hearing before an impartial trier of fact. In addressing this issue, the Fifth Circuit wrote:

> [A] fair trial by an unbiased and non-partisan trier of facts is of the essence of the adjudicatory process as well when the judging is done in an administrative proceeding by an administrative functionary as when it is done in a court by a judge. Indeed, if there is any difference, the rigidity of the requirement that the trier be impartial and unconcerned in the result applies more strictly to

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[6] See Also, Order, FCC 95M-131, released May 26, 1995 ("The Bureau will need to seek further discovery of this interrogatory through documents (which should have been produced by now), depositions, and/or the discovery of third persons." - Pg. 3)

> an administrative adjudication where many of the safeguards which have been thrown around court proceedings have, in the interest of expedition and a supposed administrative efficiency been relaxed. Nor will the fact that an examination of the record shows that there was evidence which would support the judgment, at all save a trial from the charge of unfairness, for when the fault of bias and prejudice in a judge first rears its ugly head, its effect remains throughout the whole proceeding. Once partiality appears, and particularly when, though challenged, it is unrelieved against, it taints and vitiates all of the proceedings, and no judgment based upon them may stand.

(emphasis added). Kay understands the seriousness of the allegations contained herein and in his Declaration, as well as the relief requested herein. Given the Presiding Officer's perceived bias and prejudice, however, Kay believes that the only way that he will get a fair hearing is if the Presiding Officer immediately withdraws from this case. This Motion to Disqualify is being made at this stage of the proceeding in order to permit discovery and the hearing to be conducted by a new Administrative Law Judge. Kay is prepared to defend himself against the Commission's charges and asks only that the trier of fact be an impartial one.

CONCLUSION

For the reasons set forth herein and in the attached Declaration of James A. Kay, Jr., Kay respectfully requests that the Presiding Officer withdraw from this case.

Respectfully submitted,

JAMES A. KAY, JR.

By:_____
Barry A. Friedman
Scott A. Fenske

Thompson Hine & Flory LLP
1920 N Street, N.W.
Suite 800
Washington, D.C. 20036
(202) 331-8800

Dated: March 26, 1997

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Disqualify Presiding Officer was hand-delivered on this 26th day of March, 1997 to the following:

The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Suite 220
Washington, D.C. 20554

Gary P. Schonman, Esquire
Federal Communications Commission
Wireless Telecommunications Bureau
Enforcement Division
Suite 8308
2025 M Street, N.W.
Washington, D.C. 20554

and sent via first-class mail, postage prepaid on this 26th day of March, 1997 to:

W. Riley Hollingsworth
Deputy Associate Bureau Chief
Wireless Telecommunications Bureau
1270 Fairfield Road
Gettysburg, Pennsylvania 17325-7245.

Scott A. Fenske

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the matter of	)	**WT Docket No. 94-147**
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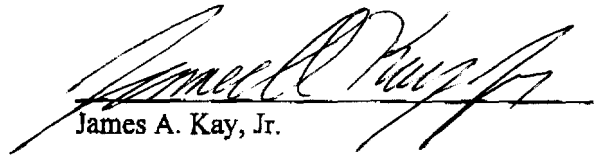
JAMES A. KAY, JR.	)	
	)	
Licensee of one hundred fifty-two Part 90 licenses in the Los Angeles, California area.	)	

DECLARATION OF JAMES A. KAY, JR.

I, James A. Kay, Jr., certify that I have read the foregoing Motion to Disqualify Presiding Officer and the facts stated therein are true and correct to the best of my knowledge and belief.



James A. Kay, Jr.

g:\saf\kay\kay declaration.wpd

GERARDPICK

6-SP[sipple]

THE HON. L. RJ
Administrative
Federal Commur
1270 Fairfield
Gettysburg, PA

Dear Bob

my husband passed away, he loved desperately to serve us, but I am at the end of the line. Kay is still suing us.

Your Honor -

THere seems to be a convention that you don't write to a Judge. There is also a convention that if you are about to drown you grab at any straw.

Please, your Honor, read the enclosed. I know it sounds as if I dramatize myself and my situation; nevertheless my family and I are being systematically destroyed because we brought some impossible facts to the attention of the FCC. And the FCC is hurt in the process.

It is the Kay case which is before you. And it radiates to the monopolistic case/investigation before Judge Hogan in the United States District Court for the District of Columbia. Please read the papers attached hereto.

Respectfully -

Gerard Pick

/ac

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A

Ms. Regina M. Keeney
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
1919 M Street N.W.
Washington, D.C.

202/632-7000

14 July 1995

Dear Ms. Keeney -

About a year and a half ago, my son (Harold) and I decided that James Kay had like a dangerous animal roamed the area in which we together with many other honest businessmen hewed a worthy livelihood and that he had done so long enough. To his harmful efforts need be added the damage he has attempted to inflict on large enterprises and the maleficence done to the Federal Communication Commission.

We compiled a detailed statement on our findings; we had them verified and then took the piece to Representative Henry Waxman. He took it to Commissioner James H. Quello - the rest is history.

The Order to Show Cause, adopted December 9,1994 and released December 13,1994, In the Matter of James A. Kay, Jr., cites just about every point, every fact, every malevolence that we had carefully presented in our submission. In other words the Commission built its entire case against the multiple transgressions of Kay on the information we had supplied.

We and every decent individual that had been plagued by Kay to the very limit now sees this "Memorandum of Understanding". Anyone who knows the German poet Goethe will surely think of "vainly you speak so many words, the other only hears the No!"* "No your cooperation with the FCC has been forgotten. Long Live Kay!

There was a time when crime did pay. Francois Villon after a career of murder was appointed Police President of Paris. He then wrote a number of beautiful poems, e.g. I'll take the stars from the firmament and string them up on silken bands as a necklace just for you. Fine for the 17th Century. Crime did NOT pay for Milken; it should not have. Why then for Kay? The Memo is a slap in the face of the American people and a kick in the back of us who run the service for Mobiles. Kay esse delendam (with a bow to the Roman Senator Cato). <u>The Memo should NOT be consumated.</u>

A somewhat similar/related case is presently heard in the U.S. District Court for the District of Columbia] (United States of America, Plaintiff v. MOTOROLA INC. and NEXTEL COMMUNICATIONS, Defendants) before the Hon. Thomas F. Hogan. The offense is monopolistic practices. The Court issued a request to a number of organizations in the Mobile business, ranging from General Electric to Century Communication Service (yours truly), to submit opinions on a proposed "Memorandum". The information I have at this time indicates that all respondents object strongly to Motorola/NEXTEL setting up a monopoly; there is also objection to the somewhat concillatory tenor of the "Memo".

The foregoing is principally a descriptions of how the people in the Mobile business feel; I think you have had confirmation of my feeling from many others.

I now take the liberty of addressing a more personal matter which is closely related to the general topic of this missive.

Shortly after our original report had been taken to Mr. Quello by Representative Waxman Motorola sued us for copyright violation as well as for other similar heinous crimes. There is not much to say about this anymore because Motorola and we have arrived at a settlement which is not as good as Motorola or I had wanted it to be but it is surely better than either of us could have obtained via Court, Judge and Jury. At least we are both friends again. Among my friends and business acquaintances there is not a single one who believed that I could fight Motorola and not be squashed.

Nevertheless I am coming very close being squashed, not by mighty Motorola but by my own stupidity helped along by the FCC.

Next, this symbol of morality, Kay, sued my son and me for af all things slander; after reading the original Order to Show Cause it would hardly be possible to do so. He has been investigated for the murder of a former secretary but he has not been convicted; neither my son nor I are dumb enough to accuse him of murder. Yet he liked to go around telling everybody that "me and Motorola is in cahoots". Kay's suit does follow a pattern: many of those he had sued did not have the money to sustain his attacks.

We now had two suits going and the financial strain was hardly tolerable. My then lawyer suggested that we go into bankruptcy. I had no exprience with that; I do not even know a single person who has declared bankruptcy. However since neither my wife, nor my son nor I owed (owe!) anybody a single penny, bankruptcy seemed to me to be totally immoral. However my wife and my son feared the constant attacks with reams of paper by the lawyers and the costs and practically begged me to try this bankruptcy deal which they knew no better than I did; the lawyer had promised that the paper attacks would stop.

My son signed and so did I, but neither paid any attention to the forms to be filled in; we signed what the lawyer gave us. (In situations like this my mother used to say "if stupidity would hurt, you would be screaming!") I had no idea that the lawyer had "signed us up" for Chapter 7 'though at the time it would have been meaningless to me.

Within a few days I began to understand the mistake I had made; when I was called for a creditors' meeting I did not attend. A letter from the Trustee informed me that if I do not attend the second meeting my application would be dismissed. I wrote that trustee 4 times and called him 6 times to tell him that I want the "thing" dimissed; he never returned my calls nor replied to my letters. But from the note signed by the Trustee I assumed that I am out of bankruptcy.

I had assumed wrongly; the Trustee had no desire (as I found out quite a bit later) to release me from the bankruptcy application because of the commission he could make from the sale of my house which he and his lawyer had already planned! (Do you by chance remember the picture of a little black girl sitting in a field dieing from starvation with a vulture sitting behind her waiting for her to topple over.) I took the matter to Court (some more expense); the bankruptcy was dismissed by the Chief Judge of the Bankruptcy Court. I was my own master again.

So I thought. My son was still in bankruptcy and the Trustee and his lawyer would not let him have the case dismissed. They had figured out a way how to get our property 'though Harold had no debts of any kind. They succeeded in putting their hands on our equipment (which was bought by my wife and me!) and the licenses.

These activities by the Trustee and his lawyer have already had most unfortunate results. One, our physician discovered that my had wife suffered a heart attack (See the 4th paragraph on page 4 of the attached Report. I will furnish our physician's name and 'phone number upon request.)

Two, please peruse the full Report (attached) I submitted to the Internal Affairs Bureau, The Los Angeles County Sheriff. Your attention is specificly directed to the last paragraph on page 4.

Three, the Trustee and his lawyer are trying to rob us of our FCC licenses. Please refer to pages 2 and 3 of our Report to the Internal Affairs Bureau.

As of this moment the licenses are blocked but the Trustee and his lawyer want to sell them to Kay; the Trustee claims he has the right to do so because under the Bankruptcy Law/Chapter 7 whatever was my son's is now his (the Trustee). I submit this reasoning to be falacious; first of all in view of recent FCC rulings Kay canNOT buy any licenses. Secondly, the licenses are mine, not my son's.

The Trustee/lawyer claim that my son and I are partners in the business (which is NOT true); therefore what is mine is his, a clever adaptation of an old joke: in Communism what is yours is mine and what is mine is none of your business.

According to FCC rules and laws, licenses cannot be transfered like merchandise; among other features prospective licensees must be qualified to hold a license. FCC licenses (like all others) cannot be bought and sold, and can be transfered only with FCC approval.

In addition, there is another rather important precedent. In 1946 the Governments of the US, UK, USSR and France agreed that any act enumerated as a crime by the Nuremberg Tribunal would become part of their Penal Codes.

One of these relatively new laws is that escape from punishment for a criminal act is not possible by declaring "I was told to do so" or "the law said so" or "it is not forbidden under the law". An individual entrusted with command and similar decisions must be aware of and follow the moral codes of the civilized world.

The Judge* who authorized the sale of my licenses declared in open Court that she is not bound by FCC rules and regulations which is in total violation of the conditions described in the two previous paragraphs. To cite the Nuremberg Tribunal in the matter at hand may appear to be a bit far-fetched but then "you hit me with the law I hit back with it".

There is yet another aspect to this dispatch. Our business' name is CENTURY COMMUNICATION SERVICE, previously Communication Consultants and Systems. It is obvious why we use CCS, especially when answering the 'phone. My son who is a fine engineer and excellent technician filled in our license applications as "Harold Pick DBA CCS ..." etc. That according to that Judge makes him my partner. The facts are [1] that he is listed as the Control Point for/on our licenses; when technical questions come in he takes care of them thus simplifying my job; [2] there is no DBA under the name of Harold Pick anywhere in California, probably not anywhere in the entire US. Nevertheless it was injudicious to use the DBA letters in this connection. And for that my wife, my son and I deserve to be punished by total destruction? In America in whose army I served (up front)? In 1938 Nazi troopers stole everything my parents owned, threw them out of their apartment in which they had lived for about 25 years and left them homeless and destitute. They had every "right" to do so, after all my mother was Jewish.

I need your help. Do NOT make crime pay, not for that gentleman of sorts, Kay, not for these barratry artists.

Sincerely -

/ac

-6/SP=INT-AFF

CENTURY COMMUNICATION SERVICE
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SANTA MONICA, CALIFORNIA 90408
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213/890-5300

THE INTERNAL AFFAIRS BUREAU
The Sheriff of Los Angeles County
4900 S Eastern Avenue Suite 100
Commerce, CA 90040

THE FOLLOWING IS RESPECTFULLY SUBMITTED TO THE SHERIFF'S

INTERNAL AFFAIRS BUREAU

1: I am the owner of a small two-way radio sales, repair and service business. The office is located in Santa Monica, the shop in the LAX area. Repeater stations are on Saddle Peak Mountain, Mount Lukens and Oat Mountain.

2: My son (Harold) assists me, specifically in the technical phases; he does however not have a financial interest in the business.

3: In August 1994 our then attorney filed Voluntary Bankruptcy (Chapter 7) for my son and a month later for me. Of the mistakes I ever made in my life this bankruptcy filing was the biggest.

4: The Trustee assigned to my case had assured me that if I do not show up at two meetings, the case would be dismissed. But I found that the Trustee did everything in his power to keep me in bankruptcy. It took me some time to understand why of all people the Trustee would want me to remain in bankruptcy; I had no debts whatever, even my cars were all paid and the mortgage on my house had over the years decreased to a very small amount. But the house as part of my property if sold by the Trustee would realize for him a sizable commission.

5: I realized the error very quickly and after a lot of unusual and costly efforts succeeded in having the bankruptcy dismissed.

6: Still there was my son's bankruptcy. Why our former atttorney ever suggested that Harold should apply for bankruptcy is totally inexplicable; Harold has no debts whatsoever. But he did and it is now exceedingly difficult to pull Harold from "voluntary bankruptcy". The trustee's lawyer has filed as of this date over 50 briefs with the Court objecting to Harold's bankruptcy being dismissed. That second Judge decided that what had been considered by all my property, naturally including the first Judge who had dismissed my ill-chosen bankruptcy and thus restored my property to me, is now Harold's.

7: With that decision the Trustee went after the business thus attempting to destroy us completely. My equipment was sold to a man who is being charged by the Federal Communication Commission as not being fit to operate under/with FCC licenses. The Judge has tried to grant this person, in addition to my equipment, our licenses though he is forbidden by Law and FCC Rules now to own such. [Licenses and equipment go together. Without equipment the licenses cannot be used; without licenses it is illegal to operate the equipment!]

8: My son took the equipment that had been listed in the "sales order" to the Trustee's lawyer; he should not have done so without my express permission because I had filed an Appeal against the Judge' decision which stayed its execution and requested the FCC to place our licenses on hold which was done.

9: At this point it is imperative to cite the following FCC rule under which every holder of an FCC licenses must operate.

The Licensee(s) have to see to it that the facilities are OPEN and READY AT ALL TIMES to serve the public need - viz Code of Federal Regulations - Telecommunications - Rule $ 90.403 General Operating Requirements

(a) LICENSEES OF RADIO STATIONS IN THE PRIVATE LAND MOBILE RADIO SHALL BE DIRECTLY RESPONSIBLE FOR THE PROPER OPERATION AND USE OF EACH TRANSMITTER FOR WHICH THEY ARE LICENSED. IN THIS CONNECTION, LICENSES SHALL EXERCISE SUCH DIRECTION AND CONTROL AS IS NECESSARY TO ASSSURE THAT ALL AUTHORIZED FACILITIES ARE EMPLOYED:

(1) only for permissible purposes;
(2) only in a permissible manner, and
(3) ONLY BY PERSONS WITH AUTHORITY TO USE AND OPERATE SUCH EQUIPMENT.

THE ONLY PERSONS PERMITTED TO USE THE EQUIPMENT ARE MY SON AND I. BY "ORDER" OF JUDGE FENNING AND THE BREAK-IN INTO OUR FACILITY - QUASI-AUTHORIZED BY THE JUDGE'S ORDER - WE WERE PREVENTED BY RAW FORCE TO ATTEND TO OUR DUTY!

10: On 15 June 1995 at approximately 1500 hours my son called to inform me that something has gone awry with the repeaters (transmitters) on Saddle Peak, that I should go and see what happened and that he will join me within the hour.

11: When I arrived on Saddle Peak, accompanied by my wife, I found two men inside the building in which I have rented space for the repeaters. The gate was locked. They were "working" at my equipment. They refused to identify themselves; one claimed to be (first) a sheriff, then a police officer. At 83 years of age I found it impossible to vault the fence but my wife did and stopped the on-going dismantling of equipment. The dark-haired man threatened my wife. He retreated when I said that I would drive my car through the fence.

12: Within about half-an-hour my son arrived with our technician; since I have leased space in the building my son could open the gate with the key.

13: My son knew the dark-haired man to be one Will Martin, but before we could really find out what the men were doing in that building and why they had their hands on our equipment the Police arrived.